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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN MARK GEBERT, DAVID GEORGE GREENWOOD,
REINHARD HEINRICH HOHENSEE, HARRY RESSE LEWIS JR.,
DWIGHT ROSS PALMER, ARTHUR RAY ROBERTS, and
DAVID EARL STONE

Appeal 2007-2804
Application 09/782,850
Technology Center 2100

Decided: January 23, 2008

Before JAMES D. THOMAS, ALLEN R. MACDONALD, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 2, 4-11, 14-16, 18-25, 28-30, 32-39, and 42-48. Claims 3, 12, 13, 17, 26, 27, 31, 40, and 41 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE INVENTION

The disclosed invention relates generally to a method, system, and program for preprocessing a document for rendering on an output device. (Spec. 1). In accordance with one embodiment, a source document is received along with a page layout data structure that provides formatting properties specifying a layout and format of the content output. The source document and the page layout data structure are processed to determine page divisions and formatting properties for the content in the source document. Multiple page objects are generated, wherein each page object includes content and formatting properties for at least one page. A rasterizer transforms the page objects into renderable information for printing (Spec. 4).

Independent claim 1 is illustrative:

1. A method for processing a source document in a structured document format including elements providing source content to render, wherein the source content comprises code that is rasterized into output, comprising:

receiving the source document including source content in a presentation language;

receiving a layout data structure separate from the source document, providing formatting properties specifying a layout and format of the content output, wherein the layout data structure does not include source content;

processing the source document and the layout data structure to determine formatting properties, including page divisions, for the content in the source document;

generating multiple page objects, wherein each page object includes source content in the presentation language used in the source document and the determined formatting properties for one page, wherein at least one page object has multiple content elements, and wherein the content elements include content to place on the pages; and

transmitting the page objects to a rasterizer to transform into renderable information capable of being generated by an output device.

THE REFERENCES

The Examiner relies upon the following references as evidence in support of the rejections:

Adler, "Extensible Stylesheet Language (XSL) Version 1.0," W3C, Working Draft 1-29 (Oct. 18, 2000).

Sall, "FOP: Formatting Object to PDF Translator (James Tauber)," 1-3 (May 24, 1999).

Saito	US 5,323,312	June 21, 1994
Barry	US 6,606,165	Aug. 12, 2003

THE REJECTIONS

1. Claims 1, 2, 4, 8-11, 14-16, 18, 22-25, 28-30, 32, 36-39, and 42-48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Adler in view of Saito.

2. Claims 5, 7, 19, 21, 33, and 35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Adler in view of Saito as applied to claims 2, 16, and 30 above, and further in view of Barry.
3. Claims 6, 20, and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Adler in view of Saito, and further in view of Barry as applied to claims 5, 19, and 33 above, and further in view of Sall.

PRINCIPLES OF LAW

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740. Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants’ Briefs to show error in the proffered *prima facie* case.

Combinability under 35 U.S.C. § 103

Appellants contend that the primary Adler reference “teaches away” from the instant claims (*see* App. Br. 7-8). In particular, Appellants contend

that Adler “teaches away” because the instant claimed “page objects” include source content and formatting properties for one page (*Id.*).

We disagree. We note that the cited Adler reference is a working draft of the Extensible Stylesheet Language (XSL) Version 1.0 (Adler 1). We agree with the Examiner that Adler teaches components such as XSL formatting objects (XSL-FO) that format content on a per-page basis (*see e.g.*, Adler, p. 18, ¶1). Moreover, the Examiner has relied on the Saito secondary reference as evidence that it was well known in the art that a structured document could consist of two parts, i.e., a “logical structure” containing source content and a “layout structure” containing formatting information in the context of a page object (*see* Ans. 4; *see also* Saito, col. 1, ll. 32-57).

We particularly note that Appellants’ Specification expressly discloses the use of the XML presentation language, the Extensible Stylesheet Language (XSL), and XSL formatting objects (XSL-FO) in accordance with one embodiment of the instant invention (Spec. 4:23-25). Thus, we conclude that Appellants’ claims broadly encompass familiar elements (e.g., XML, XSL, and XSL-FO) that have been combined according to known methods in a manner that would have yielded predictable results (e.g., formatted pages). Our reviewing court has reaffirmed that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (quoting *KSR*, 127 S. Ct. at 1739). Appellants have not

shown that the claimed combination of familiar elements produces any new function.¹ Moreover, Appellants have not provided any factual evidence of secondary considerations, such as unexpected or unpredictable results, commercial success, or long felt but unmet need. Accordingly, we find unpersuasive Appellants' arguments that Adler "teaches away" from the instant claims.

Since Adler is the primary reference relied on by the Examiner for each rejection, the combinability discussion above is applicable to each of the three stated rejections.

Elements under 35 U.S.C. § 103

At the outset, we note that the first-stated rejection is argued as four separate groups of claims (denoted here as Groups I-IV).

Group I

Claims 1, 4, 9-11, 14, 15, 18, 23-25,
28, 29, 32, 37-39, 42, 43, 45, and 47

We consider the Examiner's rejection of claims 1, 4, 9-11, 14, 15, 18, 23-25, 28, 29, 32, 37-39, 42, 43, 45, and 47 as being unpatentable over Adler in view of Saito. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we will select independent claim 1

¹ In *KSR*, the Supreme Court reaffirmed that "[w]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious." *KSR*, 127 S. Ct. at 1740 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

as the representative claim for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2006).

Appellants contend that neither Adler nor Saito teaches generating multiple page objects including “source content in the presentation language used in the source document and the determined formatting properties for one page,” as claimed (App. Br. 8-9, 11-12; *see also* independent claims 1, 15, and 29). Appellants further contend that neither Adler nor Saito teaches the claimed rasterizing of page objects (App. Br. 11; *see also* independent claims 1, 15, and 29).

The Examiner disagrees (Ans. 8-10). The Examiner, as finder of fact, has determined that Adler teaches a result tree generated by processing a XSL document (i.e., layout data structure) and a source tree (i.e., source content) (Adler 18). The Examiner notes that Adler teaches that the nodes of the result tree are formatting objects where the classes of formatting objects denote typographic abstractions such as *page*, *paragraph*, *table*, etc. (Adler 18, ¶1, ll. 1-4).

The Examiner relies upon Saito as teaching that it was well known in the art for a structured document to consist of two parts, i.e., a layout structure and a logical structure (i.e., source content) (*see* Saito, col. 1, ll. 31-57) (Ans. 10). The Examiner finds that Saito’s page objects accommodate more than one content object on the page. The Examiner contends that any document that has text and an image or table would fall into the category of having multiple content elements (Ans. 10).

Regarding the claimed step of rasterizing page objects, the Examiner maintains that all computer files are rasterized when they are printed. Thus, the Examiner reasons that when Adler's result tree is rendered for printing (or display), it is rasterized (Ans. 10-11).

Issues

We decide the issue of whether the combination of Adler and Saito teaches and/or suggests generating multiple page objects including "source content in the presentation language used in the source document and the determined formatting properties for one page," as claimed (*see* independent claims 1, 15, and 29). We also decide the issue of whether the combination of Adler and Saito teaches and/or suggests the claimed rasterizing of page objects (*see* independent claims 1, 15, and 29).

We begin our analysis by construing the scope of the claimed "page objects" (claim 1). *See In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000) ("[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification."). Our reviewing court has determined that "[w]here an inventor chooses to be his own lexicographer and to give terms uncommon meanings, he must set out his uncommon definition in some manner within the patent disclosure" so as to give one of ordinary skill in the art notice of the change. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (*quoting Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88 (Fed. Cir. 1992)).

Here, we find no specialized definition for "page objects" within Appellants' Specification. Nevertheless, when we look to the Specification

for *context*, we find Appellants have broadly described “page objects” as not being limited to the content and formatting properties for a *single* page, as follows:

Multiple page objects are generated, wherein each page object includes content and formatting properties *for at least one page*. The page objects are transmitted to a rasterizer to transform into renderable information capable of being generated by an output device [emphasis added].

(Spec. 4:12-15).

Thus, we broadly but reasonably construe Appellants’ claimed “page objects” as not being limited to a *single page*. For example, Appellants’ representative claim recites “each page object includes the source content in the presentation language used in the source document and the determined formatting properties for *one page . . .* ;” (claim 1, emphasis added). We conclude this claim language broadly encompasses a page object with source content in the presentation language used in the source document and the determined formatting properties consisting of one *or more* pages.

Moreover, we find Appellants’ have set forth an extremely broad definition as to the intended meaning of the claimed “formatting properties” in the Specification, as follows:

The term “formatting properties” as used herein describes any information used to express the layout and presentation of the accompanying content, such as page layout, fonts, page size, element size, color, margins, headers, static information, page numbering, indents, word-and letter-spacing, widow and orphan setting, hyphenation and *any other format feature known in the*

art used to define the appearance of a page of content
[emphasis added].

(Spec. 7, ll. 1-5).

In light of the above claim construction and the breadth of representative claim 1, we agree with the Examiner that the combination of Adler and Saito reasonably teaches and/or suggests generating multiple page objects including “source content in the presentation language used in the source document and the determined formatting properties for one page,” as claimed (*see* independent claims 1, 15, and 29).

Specifically, we agree with the Examiner that the instant claimed page objects are at least suggested by Adler’s teaching that formatting objects denote typographic abstractions such as page, paragraph, table, etc. (Adler 18, ¶1, ll. 1-4). Moreover, we find Saito expressly teaches page objects with content and formatting information (i.e., layout structure) (*see* Saito, col. 1, ll. 31 -57). We also agree with the Examiner that any document that has text and an image or table would fall into the category of having multiple content elements (*see* Ans. 10).

Regarding the second issue of whether the combination of Adler and Saito teaches and/or suggests the claimed rasterizing of page objects, we further agree with the Examiner that all computer files are rasterized when they are printed. Thus, we find Appellants have not shown error in the Examiner’s reasoning that rasterizing is inherently performed when Adler’s result tree is rendered for printing (*see* Ans. 10-11).

For at least the aforementioned reasons, we conclude Appellants have not established that the Examiner erred with respect to establishing a prima facie case of obviousness. Therefore, we sustain the Examiner's rejection of representative claim 1 as being unpatentable over the teachings of Adler in view of Saito.

Pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii), we have decided the appeal with respect to the remaining claims in this group on the basis of the selected claim alone. Therefore, we sustain the Examiner's rejection of claims 4, 9-11, 14, 15, 18, 23-25, 28, 29, 32, 37-39, 42, 43, 45, and 47 as being unpatentable over Adler in view of Saito for the same reasons discussed *supra* with respect to representative claim 1.

Group II

Claims 2, 16, and 30

We consider next the Examiner's rejection of claims 2, 16, and 30 as being unpatentable over Adler in view of Saito.

We note that claim 2 recites, in pertinent part:

[T]ransforming the source document and source content therein into a result document in a second presentation language, wherein the result document includes the source content and the formatting properties provided by the layout data structure, wherein the formatting properties indicate page divisions of the content, and wherein the *multiple page objects are generated from the result document* [emphasis added].

(claim 1).

Appellants acknowledge that Adler discusses how the result and source documents are in different presentation languages (App. Br. 13, ¶3). Nevertheless, Appellants contend that Adler does not teach generating page objects from the result document that include source content in the first presentation language used in the source document, as follows:

Applicants submit that although the source and result documents are in different formats, the Examiner has not cited any part of Adler that teaches generating from the result document page objects that include source content in the first presentation language used in the source document. Instead, the cited Adler discusses how the result and source documents are in different presentation languages.
(App. Br. 13, ¶3).

The Examiner initially cited pages 20-21 and 25-27 of Adler as teaching page objects generated by filling XML content into containers (Final Action 4). In the Answer, the Examiner has further pointed to Adler's XSL implementation of an Extended Page Layout Model (Adler 27, § 1.2.3) (Ans. 12, ¶3). Appellants acknowledge that the cited page 27 of Adler mentions that the XSL formatting objects provide rules by which XML source content is placed in "containers" (App. Br. 13). Nevertheless, Appellants contend that the Examiner has not cited any part of Adler that teaches or suggests that each of these cited "containers" provide content and formatting properties for one page, as claimed (App. Br. 12-13).

We begin by noting that the scope of the claimed "page objects" broadly but reasonably encompasses one *or more* pages, as discussed *supra*. Moreover, one cannot show nonobviousness by attacking references

individually where the rejections are based on combinations of references. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Here, we find Appellants' arguments are directed to the individual references in isolation rather than the combination of references as a whole. We have found *supra* that the instant claimed page objects are at least suggested by Adler's teaching that formatting objects denote typographic abstractions such as *page*, paragraph, table, etc. (Adler 18, ¶1, ll. 1-4). Moreover, Saito expressly teaches page objects with content and formatting information (i.e., layout structure) (*see* Saito, col. 1, ll. 31 -57). Therefore, on the record before us, we find the weight of the evidence supports the Examiner's position that the subject matter of claims 2, 16, and 30 is rendered obvious by the teachings of Adler and Saito.²

For at least the aforementioned reasons, we conclude Appellants have not established that the Examiner erred with respect to establishing a *prima facie* case of obviousness. Therefore, we sustain the Examiner's rejection of claim 2 as being unpatentable over the teachings of Adler in view of Saito. Because claims 16 and 30 recite essentially the same limitations as claim 2, we sustain the Examiner's rejection of these claims as being unpatentable over Adler in view of Saito for the same reasons discussed above regarding claim 2.

Group III

² *See In re Hoeschele*, 406 F.2d 1403, 1406-07 (CCPA 1969) (“[I]t is proper to take into account not only specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom . . .”).

Claims 8, 22, and 36

We consider next the Examiner's rejection of claims 8, 22, and 36 as being unpatentable over Adler in view of Saito.

Appellants dispute the findings of the Examiner, as follows:

The Examiner has not cited any part of Adler that teaches or suggests generating page objects from the result document having content and formatting properties in the first and second presentation languages. For instance, pg. 18 of Adler shows a result tree going to an output device via an XSL formatter, but nowhere shows generating page objects including content and formatting properties from the result document in presentation languages as claimed.

(App. Br. 15).

The Examiner disagrees, as follows:

As previously stated, Adler discloses an ability of XSL known as the Extended Page Layout Model. In this model, once a result tree exists "simple-page-masters" may be used to which content is used to fill pages and how the styled content (original XML content) is to be placed regionally on the page using XSL (the second presentation language) (page 27, section 1.2.3 of Adler). Thus, [Adler] clearly show[s] page objects being generated from the result document including source content in a first language and formatting properties in a second language.

(Ans. 13, ¶1).

We note, again, that the Examiner's rejection is based upon the combination of Adler and Saito, as discussed above. We have found *supra* that Saito's page objects include content and formatting (i.e., layout) information, as claimed (*see* Saito, col. 1, ll. 31 -57). Moreover, we find at least one embodiment of Appellants' invention implements Extensible

Markup Language (XML) as a first presentation language and Extensible Stylesheet Language Formatting Objects (XSL-FO) as a second presentation language (*see* Spec. 4:22-25). Therefore, we agree with the Examiner's findings of fact and will sustain the Examiner's rejection for essentially the same reasons argued by the Examiner.

For at least the aforementioned reasons, we conclude Appellants have not established that the Examiner erred with respect to establishing a prima facie case of obviousness. Therefore, we sustain the Examiner's rejection of claim 8 as being unpatentable over the teachings of Adler in view of Saito. Because claims 22 and 36 recite essentially the same limitations as claim 2, we sustain the Examiner's rejection of these claims as being unpatentable over Adler in view of Saito for the same reasons discussed above regarding claim 8.

Group IV

Claims 44, 46, and 48

We consider next the Examiner's rejection of claims 44, 46, and 48 as being unpatentable over Adler in view of Saito.

Appellants dispute the findings of the Examiner, as follows:

Although the cited Saito discusses laying out document content in page objects, nowhere is there any teaching of page sequence elements including content elements, such that the page sequence elements are accessed according to an ordering and then the content elements within the accessed page sequence

elements are added to the page objects. Nowhere does the cited Saito anywhere teach or suggest the claim requirement of including content elements in page sequence elements to determine how to add content elements to page objects.

(App. Br. 16).

The Examiner disagrees, as follows:

Saito discloses that it was well known in the art that a structured document could consist of two parts[:] a layout structure and a logical structure (source content in the logical page viewing sequence), and when filling the page objects defined by the layout structure more than one content object from the logical structure could be used per page until a page is full at which point the next page object is filled with content and so forth (column 1, lines 31-57 of Saito). These teachings combined with the Extended Page Layout Model teachings in Adler (page 27, section 1.2.3 of Adler) render the claimed limitations obvious.

(Ans. 13-14).

We find Appellants have not directly addressed the Examiner's response. Moreover, the Supreme Court has stated that the analysis under §103 "need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 127 S. Ct. at 1741. Here, we conclude that Appellants have not shown error in the Examiner's reasoning. Thus, Appellants have not established that the Examiner erred with respect to establishing a prima facie case of obviousness. Therefore, we sustain the Examiner's rejection of claim 44 as being unpatentable over the teachings of Adler in view of Saito. Because

claims 46 and 48 recite essentially the same limitations as claim 44, we sustain the Examiner's rejection of these claims as being unpatentable over Adler in view of Saito for the same reasons discussed above regarding claim 44.

Group V

Claims 5, 7, 19, 21, 33, and 35

We consider next the Examiner's rejection of claims 5, 7, 19, 21, 33, and 35 as being unpatentable over Adler in view of Saito, and further in view of Barry. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we will select dependent claim 5 as the representative claim for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2006).

Claim 5 recites, in pertinent part, that "page objects include formatting properties in a third presentation language" (claim 5).

Appellants dispute the findings of the Examiner, as follows:

The Examiner cited Barry as teaching an additional presentation language, a page description language - image bit-map. Although multiple presentation languages may be known, Applicants submit that the Examiner has not cited any part of the combination of references that teaches that a page object includes content in the first presentation language used in the source document and formatting properties in a third presentation language, such that the page objects are generated from a result document in a second presentation language.

(App. Br. 17).

We agree with Appellants that multiple presentation languages are known. In particular, we direct Appellants' attention to Adler's use of the CSS2 specification (Adler, p. 25), which is a third presentation language (where CSS2 indicates the use of the Cascading Style Sheets, level 2 presentation language, as defined by the W3C CSS2 level 2 Specification). Therefore, we find that the prior art of record expressly teaches at least three presentation languages. Moreover, we find the language of the claim is implicitly suggested by the Examiner's proffered combination of Adler, Saito, and Barry. Our reviewing court has determined that the test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. *In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006) (*citing In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000)). Therefore, we will sustain the Examiner's rejection of representative claim 5.

Pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii), we have decided the appeal with respect to the remaining claims in this group on the basis of the selected claim alone. Therefore, we sustain the Examiner's rejection of claims 7, 19, 21, 33, and 35 as being unpatentable over Adler in view of Saito and Barry for the same reasons discussed *supra* with respect to representative claim 5.

Group VI
Claims 6, 20, and 34

Appellants contend that claims 6, 20, and 34 are patentable over Adler in view of Saito, Barry, and Sall for the same reasons previously argued regarding independent claims 1, 15, and 29, as well as intervening dependent claims 5, 19, and 33 (*see* App. Br. 18). Since we have found Appellants have failed to show error in the Examiner's rejection of independent claims 1, 15, and 29 (and intervening dependent claims 5, 19, and 33), we sustain the Examiner's rejection of claims 6, 20, and 34 for the same reasons previously discussed regarding independent claims 1, 15, and 29 (and also intervening dependent claims 5, 19, and 33).

OTHER ISSUE

In the event that prosecution is reopened in this application, we leave it to the Examiner to consider a 35 U.S.C. § 101 rejection of claims 29, 30, 32, 33-39, 42, and 47-48 as being directed to non-statutory subject matter. From the Specification it is clear that the scope of the claimed "article of manufacture" that "comprises code capable of causing a processor to perform" (independent claim 29) broadly encompasses "wireless transmission media, signals propagating through space, radio waves, infrared signals, etc." (Spec. 13:16-17). This technology has been found to be non-statutory.

A claim directed to computer instructions embodied in a signal is not statutory under 35 U.S.C. § 101. *See In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007) ("A transitory, propagating signal like Nuijten's is not a

‘process, machine, manufacture, or composition of matter.’ Those four categories define the explicit scope and reach of subject matter patentable under 35 U.S.C. § 101; thus, such a signal cannot be patentable subject matter.”).

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have not shown the Examiner erred in rejecting claims 1, 2, 4-11, 14-16, 18-25, 28-30, 32-39, and 42-48 under 35 U.S.C. § 103(a) for obviousness.

DECISION

The decision of the Examiner rejecting claims 1, 2, 4-11, 14-16, 18-25, 28-30, 32-39, and 42-48 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

clj

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